



## Service Animals: Sec. 35.136

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Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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# Table of Contents

|                                    |   |
|------------------------------------|---|
| Service Animals: Sec. 35.136 ..... | 3 |
|------------------------------------|---|

## Service Animals: Sec. 35.136

**Reference Number:** MTAS-1046

### § 35.136 *Service animals*

(a) **General.** Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(b) **Exceptions.** A public entity may ask an individual with a disability to remove a service animal from the premises if —

- (1) The animal is out of control and the animal's handler does not take effective action to control it; or
- (2) The animal is not housebroken.

(c) **If an animal is properly excluded.** If a public entity properly excludes a service animal under § 35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises.

(d) **Animal under handler's control.** A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

(e) **Care or supervision.** A public entity is not responsible for the care or supervision of a service animal.

(f) **Inquiries.** A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

(g) **Access to areas of a public entity.** Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

(h) **Surcharges.** A public entity shall not ask or require individuals with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

(i) Miniature horses.

(1) Reasonable modifications. A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

(2) Assessment factors. In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public entity shall consider—

(i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;

(ii) Whether the handler has sufficient control of the miniature horse;

(iii) Whether the miniature horse is housebroken; and

(iv) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

(3) Other requirements. Paragraphs 35.136 (c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

Should you have questions about these changes, the Department of Justice has a very easy to read and understand one-page fact sheet available [1].

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**Links:**

[1] [http://www.ada.gov/service\\_animals\\_2010.htm](http://www.ada.gov/service_animals_2010.htm)

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